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In like manner penal legislation for many years has clung to the old systems. Penalties are divided into degrees and these degrees are rigidly, we would say automatically, applied without any consideration being given to causes of crime which cannot be contemplated by rules of law, but can only be weighed by the sound judgment of the magistrate or that of the jury.

The predominating legislative reaction which prevents the necessary application of new laws to the new conduct of life finds a favorable element in the very system of codification. This system, in fact—while denoting progress in so far as to present in an organic form legislation enacted on specific matters and avoid the contradictions which readily arise in unsystematic legislation—becomes a great obstacle to any gradual reform. Be that as it may, it is an undeniable fact that in Spain, as in all other great Latin countries, there is a legislative tardiness of which no true and proper explanation can be given, notwithstanding the fact that Parliaments and the field of politics are full of free and progressive minds, of extremists who entertain bolder ideas than those of their Anglo-Saxon brethren.

The author of this "Guide" confines himself to general tendencies, but from these one may arrive at the conclusions which we have presented.

The part dealing with constitutional and administrative law is rather poor, not through any fault of the author, but because relatively few jurists in Spain have made a study of public law. Thus the six constitutions which during the past century followed each other under the violent blows of military *pronunciamientos* have found no commentator worthy of mention, and the few treatises on this subject have not the importance which such publications have in countries where the régime is more normal and more earnest attention is given to the fundamental institutions of the Nation.

This "Guide" is really useful as a *vade mecum* for those who devote themselves to the science of law and those who, in a practical field of endeavor, must become acquainted with certain questions; it is in substance the best advice which a man who is both a scholar and a librarian can give.

Orestes Ferrara.

THE ATLANTIC PORT DIFFERENTIALS. By JOHN B. DAISH, Washington: W. H. LOWDERMILK & Co. 1918. pp. xix, 524.

This work is a compilation, fully and accurately indexed, of the findings of official and unofficial investigators. The documents copied contain valuable information and the evident purpose of the compiler was to make easily available the data necessary to an understanding of the causes and claimed justification of the system of differential rates to and from the North Atlantic Ports. Briefly the compilation shows:

Comprehended by the term North Atlantic Ports are the cities of Boston, New York, Philadelphia and Baltimore, and the rate points near each, which for rate making purposes are regarded as part of their nearby port. These cities from the beginning of their commercial importance have actively competed among themselves.

The New York Central & Hudson River Railroad Company and the Erie Railway Company were claimed as New York railroads; the Pennsylvania Railroad Company was called a Philadelphia road and a proprietary interest in the Baltimore and Ohio Railroad Company

was said to be in Baltimore. Using the average of the short line distances to the principal cities, Columbus, Ohio, and west to the Missouri River cities, and taking Boston as the standard; New York is nearer to these western markets by twelve, Philadelphia by eighteen and Baltimore by twenty-two per cent.

Rate wars among the railroads and competition among the cities caused varying rates, but generally there was an agreement that Baltimore and Philadelphia should have lower rates than New York. New York and Boston frequently had the same rates, although at times the Boston rates were the higher. The New York rates were usually taken as the standard, the other cities being given different rates, but without any fixity of the difference. A differential, that is, a fixed difference which automatically, when the standard is determined, fixes the rate to all points related to the standard-rate point, was agreed on (April 5, 1877) by the four railroads already named. On December 1st, 1881, Albert Fink, Commissioner for these trunk lines, in an exhaustive discussion of the subject, stated the problem thus:

"The object is to determine the relative charges for transportation by rail to the seaboard cities, with the view of securing to each of the competing railroad companies a fair share of the traffic, without at the same time justly discriminating between the commercial communities, each of which must have an equal chance unrestricted by arbitrary transportation charges, to compete with the other in the markets of the world."

Allen G. Thurman, E. B. Washburne and Thomas M. Cooley were later selected by the railroads to study the question and to make a report. Their report, formulated after hearing from the interested communities, is the most valuable of the documents copied. Three principles were presented to this Commission as controlling. Baltimore and Philadelphia claimed that distance should be the test. New York relied on cost of service as a governing principle, and New York and Boston both claimed that commercial competition was sufficient to require for them equal rates with Baltimore and Philadelphia. The existence of the Erie Canal was also relied on by New York.

The Thurman-Washburne-Cooley Commission found that distance, cost of service and competition should all be given consideration; but it is apparent from their report that in their opinion competition was the most potent factor. The findings conclude:

"Differential rates have come into existence under the operation of competitive forces; they bear some relation to relative distance and relative cost of service; they recognize as we think the relative advantages of several seaports; and they are subordinate to the great principle which compels the carriers of property competing between the same points and offering equal facilities to their customers, to make the same rates. We, therefore, cannot advise their being disturbed."

Since the creation in 1887 of the Interstate Commerce Commission that tribunal has been frequently called upon to consider the legality of the differentials, and its reports dealing with the subject are copied.

The railroads, the unofficial and the official investigators have all recognized the propriety and legality of the differential. In fixing the amount thereof neither distance nor cost of rendering the service has been given determining consideration.

In reading this useful compilation and in considering the arguments presented on behalf of the several interests the question obtrudes, what effect will the governmental operation of railroads have on the issue? Now that the individual interests of the roads need not be regarded, shall the desires of commercial communities fix rates and differentials and determine how freight shall move, or shall all freight be sent to the consumer by the cheapest and quickest route? The question, although suggested by the history given, is not discussed by the compiler, and is therefore not within the purview of this review.

Edgar Watkins.

TRADING WITH THE ENEMY. By CHARLES H. HUBERICH. New York: BAKER, VOORHIS & Co., 1918, pp. xxxiii, 485.

The true basis of the prohibition Trading With the Enemy has only recently come to be recognized. Rousseau's great declaration that, "*La guerre n'est point une relation d'homme a homme, mais une relation d'Etat a Etat*", led Pinheiro-Ferreira to wonder why the doctrine should exist at all. The English and American courts likewise, for the most part, failed to perceive the essential reasons involved, up to about the middle of the nineteenth century, and upheld the rule to obviate "political danger", the risk of espionage, or betrayal through "the cupidity of corrupted avarice". It is a startling fact that even so late as 1874 Japan was allowing the export of coal to China during the course of the China-Japanese War.

However, at present the potency of economic weapons is clearly understood and the trading non-combatant is recognized as a combatant. Every great nation involved in the war has enacted into law restrictions upon trading with the enemy. The American Act was passed to supplement the common law rules in so far as these would to-day prove inadequate. In places the provisions are more stringent owing to the altered conditions of international trade; in other places, due to more enlightened views as to the position of non-combatants, the old rules have been relaxed. The Act is simply a careful attempt so to restrict American trade that American economic power can be employed most effectively as a supplement to the military program.

It is the precise legal effect of the statute which Mr. Huberich has taken up in his present timely and valuable work. After a brief general discussion of international law and of the common law doctrine of trading with the enemy, he proceeds to consider the Act phrase by phrase, almost word by word, in an attempt to elucidate its provisions. In fact, the volume is really the Trading with the Enemy Act annotated. The author has not only searched out the latest decisions of the American and English courts, but has gathered together also recent Canadian, South African, Australian, Irish and Scotch cases. The discussion is quite full and generous use is made of quotations. Even Continental and Japanese law has received consideration. The work is essentially for the practitioner, who will find therein useful discussions upon such subjects as the scope of the word "trade", the effect of war on contracts, and the status of enemy litigants. Those interested in the historical and theoretical aspects of the subject will